Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Sandwich Isles Communications, Inc.	WC Docket No.: 10-90 DA 17-168 File No.: EB-IHD-15-00019603 NAL/Acct. No.: 201732080004 FRN: 0001514090 FCC Order 16-165

To: The Commission

SANDWICH ISLES COMMUNICATIONS, INC.'S COMMENTS IN RESPONSE TO THE COMMISSION'S FEBRUARY 14, 2017 PUBLIC NOTICE

Sandwich Isles Communications, Inc. ("SIC"), by its undersigned counsel, hereby submits these Comments in response to the Commission's February 14, 2017 Public Notice and Request for Comment[1]. As demonstrated below and in SIC's other filings in this proceeding, the Commission' proposal to initiate proceedings against SIC to "revoke its Commission authorizations, including but not limited to, its Section 214 authorizations" is without factual or legal merit. The Commission is compelled to decline the initiation of such proceedings.

I. BACKGROUND

As SIC has demonstrated in detail, the Commission's December 5, 2016 Notice of Apparent Liability ("NAL") is based on a series of premises that are factually and legally unfounded. *See generally* Sandwich Isles Communications, Inc.'s Comments and Response to Notice of Apparent Liability and Forfeiture Order (FCC Order 16-165) and FCC Order 16-167 (Feb. 3, 2017) ("SIC's Response to NAL"); *see also* SIC's January 4, 2017 Petition for

[1] *See* Feb. 14, 2017 Public Notice, DA 17-168, File No.: EB-IHD-15-00019603, WC Docket Nos. 16-405 and 10-90, CC Docket No. 96-45, *Wireline Competition Bureau Seeks Comment on Initiating Proceedings to Revoke Sandwich Isles Communications, Inc.'s Commission Authorization* ("Public Notice").

Reconsideration of FCC Order 16-167 ("SIC's Petition for Reconsideration").[2] Consequently, there is no basis for the Commission's proposed revocation of SIC's Commission authorizations.

Further, the more this proceeding moves along, the more transparent the Commission's motives become, that is, to put SIC out of business to the detriment of the people of the Hawaiian Home Lands ("HHL") based on the FCC's prejudgments rather than the actual evidence and law. For example, the FCC recently sought comment on the license that the Department of Hawaiian Home Lands ("DHHL") entered into in 1995 – over twenty (20) years ago – with SIC's parent corporation, Waimana Enterprises, Inc. ("WEI"). More specifically, the FCC sought comment on whether that license "conflicts with Section 253(a) of the Communications act." *See* Feb. 6, 2017 Public Notice, DA 17-135, WC Docket No. 10-90, CC Docket No. 96-45, *Wireline Competition Bureau Seeks Comment on the Department of Hawaiian Home Land's Request for Guidance on Whether Sandwich Isles, Inc.'s Exclusive License to Serve the Hawaiian Home Lands Conflicts with Section 253(a) of the Communications Act*, at 2. This purported licensing issue is nowhere mentioned in the NAL nor the companion FCC 16-167 Order (both issued on December 5, 2016) despite the FCC ostensibly having months to prepare those orders and the sanctions proposed therein.

If the FCC legitimately thought that the evidence and law supported the finding of a conflict between the WEI license and Section 253(a), it would have raised it in one of the two December 5 Orders (if not both), rather than waiting until *after* SIC filed its Petition for Reconsideration on January 4, 2017 and *after* SIC filed its Response to the NAL on February 3, 2017, both of which demonstrate that the December 5 Orders should be vacated. The FCC's delay in raising the purported Section 253(a) issue, coupled with the tight and irregular timeframes imposed by the

[2] SIC's Response to NAL and Petition for Reconsideration are attached hereto as Exhibits 1 and 2 respectively and are incorporated by reference as if fully set forth herein.

FCC for the filing of comments on that issue, confirm that this latest move is nothing more than an attempt by the Commission to belatedly backfill the holes in the NAL and FCC 16-167 Order identified by SIC in order to keep its campaign against SIC going. For the reasons set out by WEI and SIC, however, there is, in reality, no "conflict" between the license and Section 253(a), and the Commission's campaign, once again, fails. *See* February 27, 2017 Reply of Waimana Enterprises, Inc. and March 9, 2017 Reply Comments of Sandwich Isles Communications, Inc., *In the Matter of Department of Hawaiian Home Lands Request for Guidance Regarding Sandwich Isles, Inc.'s Exclusive License Pursuant to Section 253(a) of the Communications Act*, WC Docket No. 10-90, CC Docket No. 96-45.

There is equally no legal or factual basis for revocation of SIC's Section 214 authorization, and the regulatory kitchen sink being thrown at SIC continues to hold no water.

II. THE PROPOSED SECTION 214 REVOCATION PROCEEDINGS ARE WITHOUT FACTUAL OR LEGAL SUPPORT

The NAL fails to specifically identify what alleged conduct by SIC justifies the draconian sanction of revoking its Section 214 and other authorizations. Instead, the NAL, in conclusory fashion, indicates that such sanctions are justified "in light of SIC's egregious misconduct and the demonstrated harm to the Fund from its apparent violations." *See* NAL at 28 ¶ 84.

The only alleged "harm to the Fund" by SIC identified in the NAL is the $27 million in alleged Universal Service Fund ("USF") overpayments received by SIC that are the subject of the companion FCC 16-167 Order. *See* NAL at 2 ¶ 3. As SIC's Petition for Reconsideration of that Order and supporting Declarations demonstrate, the FCC 16-167 Order must be set aside because, *inter alia*, it is contrary to the unrebutted factual evidence presented by SIC, is based on an "affiliate transaction rule" that does not exist, and violates the applicable statute of limitations. *See generally* SIC's Petition for Reconsideration and the Declaration of James A. Rennard (Exhibit 2

hereto). Indeed, the record evidence – which the Commission wholly ignored – demonstrates that the maximum amount of alleged Category 1 overpayments is $4.1 million, not the $26.3 million conjured up by USAC and the Commission and, further, there is no legal or factual basis for the yet-to-be-determined amount of "improper" management fees. *See* SIC's Petition for Reconsideration at 4-8, 13-15. Therefore, the FCC 16-167 Order cannot and does not support the Commission's conclusion that SIC's Section 214 authorization should be revoked.[3]

At best, initiation of revocation proceedings is premature until the Commission rules upon SIC's Petition for Reconsideration. Separate and apart from a determination on that Petition, the Commission cannot initiate revocation proceedings until it has rendered *final* determinations on both the FCC 16-167 Order and the NAL, neither of which is self-executing. To do otherwise is to presuppose an outcome in an attempt to improperly shift the burden of proof.

III. SIC HAS FULFILLED ITS PROMISES TO THE PEOPLE OF THE HHL DESPITE SIGNIFICANT OPPOSITION AND REGULATOR RENEGING

The HHL region was established by Congress in 1921 for the benefit of native Hawaiians. For almost eighty (80) years thereafter, the people of the HHL, who are trust beneficiaries, had either no or inadequate telecommunications services. Over twenty (20) years ago, SIC was the only carrier that was willing to make the necessary investment of time and money to change that. As detailed in its prior filings and again below, SIC has delivered on its promises to the DHHL and the people of the HHL to build a modern telecommunications network and provide the same telecommunications services offered to the rest of the country.

While it is beyond question that the people of the HHL deserve the modern telecommunications services that have been and continue to be provided by SIC, the Commission

[3] The only other alleged "egregious misconduct" identified in the NAL is the conviction of SIC's principal (Al Hee) for *personal* tax income violations. However, as SIC has demonstrated, this fact is irrelevant and cannot support revocation of *SIC's* 214 authorization. *See* SIC's Response to NAL at 18-20.

pays lip service to the interests of the subscribers who depend upon SIC's services for, *inter alia,* contacting emergency services personnel. In seeking to revoke SIC's Section 214 authorization, the Commission completely ignores the fact that: (a) there was NO service to the HHL areas served by SIC until, over the objections of the ILECs who were conveniently unwilling to invest in the people of the HHL, the Commission granted SIC the study area and 214 authorization which enabled SIC to participate in the USF program and NECA pool; and (b) there will be no service or virtually no service if the Commission were to actually revoke either one of these authorizations. *See* April 29, 2016 Comments of Sandwich Isles Communications, Inc. *In the Matter of Sandwich Isles Communications, Inc. Petition for Declaratory Ruling,* Wireline Competition Bureau, Docket No. 09-133, at 3, 18, and 20.

The Commission's decision to revoke SIC's authorizations and terminate service to the people of the HHL is the result of the Commission's transparent, unlawful predetermination of the issues in this case in order to achieve the Commission's goal of putting SIC out of business at all costs and to the significant detriment of SIC's subscribers. As demonstrated below, attempting to save USF dollars by shutting off service to the people of the HHL is neither a legitimate nor lawful exercise of the Commission's authority.

A. SIC Stepped Up When No One Else Wanted To and Despite Significant Opposition

Constructing a modern telecommunications network to service the people of the HHL presented unique and extremely difficult challenges. The HHL region spans roughly 200,000 acres spread out over more than 70 non-contiguous parcels on six of the largest eight Hawaiian Islands. The vast majority of the HHL consists of remote and under-developed rural land, separated by undeveloped government property and open-ocean. The State of Hawaii in general – and even more acutely, the HHL – is a unique, difficult and expensive area for telecommunications

providers to serve. Hawaii is the only state in the U.S. that is comprised entirely of islands – hundreds, in fact, scattered across more than 1500 miles. And it is located along a volcanic archipelago in the middle of the Pacific Ocean, over 2,500 miles from the nearest continental land-mass. Developing and maintaining adequate telecommunications infrastructure and operations to service this region is resource-intensive, to say the least.

Despite these significant challenges, in 1995, SIC was authorized to serve the HHL through a license granted to its parent company by the DHHL. This authorization was granted to SIC after GTE, the incumbent carrier, made clear that it was unwilling to provide single-party service to HHL residents at reasonable cost. In fact, all of the pre-existing service providers refused to invest in adequate and reliable inter-island and terrestrial facilities to serve the outer islands and other rural areas of Hawaii, including the HHL, despite the fact that they all had the express approval of the Hawaii Public Utilities Commission ("PUC") to do so.[4]

Thereafter, in February of 1998, over GTE's Opposition, the Common Carrier Bureau granted SIC a waiver of section 36.611 of the Commission's rules to the extent necessary to permit SIC to receive high-cost loop support for 1998-1999. *See Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification, Order,* AAD 97-82, 13 FCC Rcd 2407 (Acct. Aud. Div.) (Feb. 3, 1998) ("1998 Waiver Order"). SIC's construction began in 2000. The National Exchange Carrier Association ("NECA") indicated, at the time, that it was reasonable to include the entire project, including the submarine leg for the network, for cost recovery from the NECA pool and/or high cost loop support

[4] The lack of adequate service before SIC led the legislature to authorize the state commission to certify additional telephone companies. *See, e.g.*, June 29, 2005 Letter from R. Herkes, State Representative, 5th District, to M. Dortch, FCC, CC Doc. 96-45 (noting that "we passed Act 80 . . . opening the way for additional telephone companies to serve our neglected rural areas with modern infrastructure capable of delivering advanced services.").

(whichever was relevant). *See* Sandwich Isles Communications, Final Environmental Assessment/Finding of No Significant Impact: Submarine Fiber-Optic Cable Project (April 2004).

B. The Ensuing Regulatory Morass and Reneging

What followed from the 1998 Waiver Order was a more than seventeen (17) year regulatory morass. A month after the 1998 Waiver Order was issued, GTE filed an Application for Review by the full Commission, contending that the study area at issue was within its own servicing territory. *See GTE Hawaiian Telephone Company, Application for Review of an Order Granting in Part a Petition for Waiver by Sandwich Isles Communications, Inc.* (March 5, 1998). Over six (6) years later, the full Commission decided the GTE Appeal of the 1998 Waiver Order, reversing the Bureau's determination. According to the Commission, the Bureau erred by ignoring evidence in the record that the areas SIC proposed to serve were not, in fact, "unserved" for purposes of the study area waiver requirement. *See GTE Hawaiian Telephone Co., Inc., Application for Review of a Decision by the Common Carrier Bureau, Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification,* AAD 97-82, Memorandum Opinion and Order, 19 FCC Rcd 22268, para. 1 (2004). The fact was that only some of the exchanges served by SIC were within GTE's study area. *See id.*

In the 2004 study area waiver Order, the full Commission only required SIC to seek and obtain a study area waiver in order to secure continued treatment as an incumbent LEC for purposes of receiving USF support and Part 69 access cost recovery. *GTE Hawaiian Telephone Company, Inc.*, AAD 97-82, Memorandum Opinion and Order, FCC 04-256, 19 FCC Rcd 22268 (2004). The FCC indicated that this study area waiver petition required to be filed by SIC would give the full Commission the occasion to consider whether creating a high-cost study area in

Hawaii would have an adverse effect on the USF program, and whether it would serve the public interest.

In response to the Commission's 2004 study area waiver order, SIC submitted a petition in December 2004 for a study area waiver and for eligibility to participate in the NECA tariffs and pools ("2004 Petition for Waiver"). Once again, SIC's competitors vigorously opposed. The Common Carrier Bureau, however, granted SIC's 2004 Petition for Waiver, noting that: (a) SIC had been able to extend service to more than 4,000 new home sites and had already installed nearly 1,200 access lines in 20 new communities across the HHL, and expected to expand service to an additional 14 communities during 2005; (b) SIC's "[c]onstruction of backbone infrastructure began in earnest in 2000, with RUS approval of funding for a comprehensive network design that will connect all of the Hawaiian home lands on all six of the major Hawaiian Islands" and that, "[w]ith continued RUS loan funds, [SIC] expects to complete the majority of its terrestrial network by the end of 2006"; and (c) while it was difficult to assess the precise numbers of potential subscribers in the HHL, the DHHL "has a waiting list of approximately 20,000 native Hawaiians who have applied for lots" and the granted "waivers will permit [SIC] to continue being treated as an incumbent LEC for purposes of receiving universal service support and participating in the NECA tariffs and pools." *See In the Matter of Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission's Rules,* 20 FCC Rccd 8999 (May 16, 2005) ("2005 Waiver Order"). The Bureau further held that:

> because [SIC] has made large capital investments to provide service, its company-specific rates have the potential to be extremely high over the long term. Therefore, it is in the public interest to permit [SIC] and its customers to benefit from the cost savings and lower rates available through NECA participation.

Id.

On September 29, 2010 – twelve (12) years after the 1998 Waiver Order, ten (10) years after RUS had originally approved SIC's loan package, and five (5) years after the 2005 Waiver Order – the Bureau issued a ruling that was contrary to its earlier orders, concluding that only fifty percent (50%) of SIC's undersea (Paniolo) cable lease expenses qualified for the NECA pool.

SIC petitioned for reconsideration of the Bureau's 2010 order and AT&T – a consistent opponent of SIC's efforts to provide service to the people of the HHL – filed an Application for Review of the Bureau's 2010 order. This briefing culminated in the Commission's December 5, 2016 order holding that SIC was not even entitled to include 50% of its Paniolo lease costs in the NECA pool, directing "NECA to discontinue payment of the disputed amounts and to cease allowing SIC to include 50 percent of the disputed lease costs of the Paniolo cable lease expenses, as well as certain other expenses in its revenue requirement." *See In the Matter of AT&T Application for Review; Sandwich Isles Communications, Inc. Petition for Declaratory Ruling,* WC Docket No. 09-133 at 5 ¶ 9 (Dec. 5, 2016) ("NECA Order"). On February 3, 2017, SIC filed with the D.C. Circuit Court of Appeals a Petition to Review the NECA Order.[5]

IV. THE COMMISSION HAS UNLAWFULLY PREDETERMINED THE OUTCOME OF THIS CASE TO THE DETRIMENT OF SIC'S SUBSCRIBERS

It is an unimpeachable and "fundamental premise that principles of due process apply to administrative adjudications." *See Antoniu v. S.E.C.,* 877 F.2d 721, 724 (8th Cir. 1989) (citing *Amos Treat & Co. v. SEC,* 306 F.2d 260, 264 (D.C. Cir. 1962)). "The Supreme Court has described the requirements of due process: 'A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases.'" *Id.* (quoting *In re*

[5] The parties are awaiting a briefing schedule from the Court.

Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955)). "The Court has demanded not only a fair proceeding, but also that justice must satisfy the appearance of justice." *Id.* (quoting *In re Murchison,* 349 U.S. at 136, 75 S.Ct. at 625) (internal quotations omitted).

Further, "[i]t requires no superior olfactory powers to recognize that the danger of unfairness through prejudgment is not diminished by a cloak of self-righteousness." *Cinderella Career & Finishing Schools, Inc. v. F.T.C.,* 425 F.2d 583, 590 (D.C. Cir. 1970). Rules against prejudgment and predetermination by administrative agencies exist to make "certain that the image of the administrative process is not transformed from a Rubens to a Modigliani." *Id.* These Rules have been violated here, as the Commission's pre-decision public statements, procedural irregularities, ignoring of relevant evidence, and unprecedented and unsupported sanctions – including but not limited to proposed revocation of SIC's Section 214 authorization – all confirm that the NAL and the FCC 16-167 Order were the last step in the Commission's plan, pre-conceived long ago, to put SIC out of business to the detriment of its subscribers.

A. Then-Commissioner Pai's Pre-Decision Public Statements

Over a year before the Commission issued the NAL and FCC 16-167 Order, and during the pendency of the USAC investigation, Commissioner Pai issued a public statement indicating that he had already prejudged the outcome of that investigation. *See* October 19, 2015 Statement of Commissioner Ajit Pai, *In re: Connect America Fund,* WC Docket No. 10-90, *ETC Annual Reports and Certifications,* WC Docket No. 14-58 (Exhibit 3 hereto). Specifically, he took issue with the alleged fact that "[s]ince 2002, [SIC] has collected $249,489,940 from the federal Universal Service Fund to serve no more than 3,659 customers." *See id.* He also harshly criticized SIC for: (a) its business decisions with respect to the Paniolo undersea cable seven years prior (even though those decisions were all disclosed to NECA and the FCC at the time they were made);

(b) its relationships with other companies that were the subject of the ongoing USAC investigation; and (c) continuing to collect payments from other rural telephone companies for the Paniolo undersea cable network. *See id.* Confirming his bias towards SIC and prejudgment of the outcome of this proceeding, then-Commissioner Pai held that SIC was a "disgrace." *See id.* In fact, he chastised the Commission for "turn[ing] a blind eye to [SIC's] conduct for so long." *See id.*

These are precisely the kinds of pre-decisional statements that courts have held constitute bias, prejudgment and a violation of due process by agency officials, requiring disqualification of the agency official making the statement, the setting aside of agency determinations in which the official participated, or both. Indeed, in *Antoniu supra*, the Eighth Circuit held that similar public statements by an SEC Commissioner about a respondent in an ongoing proceeding demonstrated that the Commissioner had "'in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'" *Antoniu*, 877 F.2d at 726 (citation omitted). Even though the Commissioner in *Antoniu* recused himself "prior to the filing of the SEC's final decision," the Eight Circuit nonetheless nullified the entirety of that decision and remanded the case to the SEC "with directions to make a *de novo* review of the evidence, without any participation" from the Commissioner making the pre-decisional statements. *Id.* The rationale was simple: there was "no way of knowing" how the Commissioner's participation prior to recusal "affected" the deliberations of the other SEC Commissioners that rendered the final decision. *See id.* Other cases are in accord. *See Staton v. Mayes*, 552 F.2d 908, 914-15 (10th Cir.) *cert. denied* 434 U.S. 907, 98 S. Ct. 309, 54 L.E.2d 195 (1977) (public and private statements by school board members about subsequently dismissed superintendent before dismissal hearing violated due process and required invalidation of the school board's dismissal determination); *Texaco, Inc. v. FTC*, 336 F.2d 754, 759-60 (D.C. Cir. 1974), *vacated on other grounds*, 381 U.S. 739, 85 S. Ct. 1798, 14 L.Ed.2d 714

(1965) (FTC Chairman's speech implicating respondent in a pending antitrust proceeding "revealed that he had prejudged the matter" and his "continued participation in the proceedings violated due process" and required invalidation of the FTC's order.); *Cinderella*, 425 F.2d at 591-92 (FTC Chairman's pre-decisional speech – which did not even identify the respondent – held to have prejudged the issues, requiring FTC decision to be vacated and case remanded for review without participation of Chairman).

SIC has not requested nor moved for recusal in its pleadings or comments, nor is it doing so here. All that SIC is requesting is for the Commission and the Bureau to reach its decisions based on the facts presented in the record and the governing legal authorities. This the Commission cannot do if it initiates Section 214 revocation proceedings before ruling on SIC's Petition for Reconsideration and before it issues final determinations on both the FCC 16-167 Order and the NAL.

B. Procedural Irregularities, Ignoring of Evidence and Unprecedented Sanctions

The FCC's implementation of irregular procedures, ignoring of relevant and dispositive evidence and attempt to levy unprecedented sanctions are all detailed in SIC's Response to NAL and Petition for Reconsideration and are incorporated by reference herein. The following are repeated as further confirmation of the Commission's bias and predetermination of the issues as they relate to the NAL, including the proposed revocation of SIC's Section 214 authorization:

- USAC and the FCC ignored undisputed factual evidence which demonstrates that the amount of alleged Category 1 overpayments to SIC was $4.1 million, not $26.3 million;
- The Commission claimed that SIC violated an "affiliate transaction rule" that does not exist;

- The Commission claimed that the statute of limitations doesn't apply because it pursued SIC in an administrative adjudication rather than formal litigation; this position has been expressly rejected by the courts;
- The Commission applied a per day penalty because of alleged errors in four (4) cost studies submitted years ago in order to fabricate an historical $49 million penalty, even though USAC has not concluded the additional work on SIC's cost studies directed by the Commission in FCC Order 16-167 and even though the Commission routinely abstains from imposing a per day penalty;
- Despite the fact that the NAL directed the Wireline Competition Bureau – on December 5, 2016 – to issue a Public Notice seeking comment from DHHL and other stakeholders on the proposed revocation of SIC's Section 214 authorization, the Bureau waited over two (2) months until February 14, 2017 to issue the Public Notice requesting comment, which was over one (1) month *after* SIC filed its Petition for Reconsideration of the FCC 16-167 Order and almost two (2) weeks *after* SIC filed its Response to the NAL; and
- The Commission sought comment on whether the WEI-DHHL license conflicted with Section 253(a) of the Communications Act *after* SIC filed its Petition for Reconsideration demonstrating that the FCC 16-167 Order – the foundation for the NAL – must be set aside and three (3) days after SIC filed its Response to the NAL, which demonstrates that the NAL must be vacated. The public notice set an unusually tight timeframe for comments (fourteen (14) days), with the due date falling on a legal holiday. Less than one (1) week was allowed for the submission

of reply comments and a Motion for an Extension of Time filed by SIC has never been acted upon.

The FCC's conduct described above and in SIC's other submissions demonstrate without question that the FCC made a decision long ago to put SIC out of business, no matter what the record evidence showed or controlling law required, and no matter the impact on SIC's subscribers. SIC's due process rights were violated here, and any proposed revocation of SIC's Section 214 authorization must be rejected.

Indeed, since the Section 214 authorization was granted, SIC's files and conduct were audited and investigated *ad nauseum* – over two dozen times by SIC's count – by various governmental agencies, including: (1) on-site review by NECA in 2003, 2004, 2010, and 2013 with no major adjustments being proposed (*see* Declaration of Randall Y.C. Ho ("Ho Decl.") ¶ 6 (Exhibit 4 hereto); (2) audits by RUS in 2002, 2005 and 2009 with no significant findings (*see id.* ¶ 7); (3) a tax year 2003 audit by the Internal Revenue Service during 2006 to 2008 with no final adjustment issued (*see id.* ¶ 8); (4) an audit of SIC's USF program for 2006 and 2007 by Congressman Waxman's Oversight Committee in 2008 with no report issued (*see id.* ¶ 9); (5) a review of SIC's 2010 records by the FCC Office of the Inspector General in 2012 with no report issued (*see id.* ¶ 10); (6) an audit by USAC in 2008 and 2010, with a report finding that USF disbursements to SIC in 2007 were understated (*see id.* ¶ 11); and (7) High Cost Payment Quality Assessments by USAC in 2011, 2012, 2014 and 2015 with no significant findings. *See id.*

All of these various regulators investigated and audited SIC for years, with not even a hint that it was committing the alleged wrongdoing complained of by the FCC in the NAL nor the possibility of the company-closing sanction of the loss of its Section 214 authorization. The fact that these regulators thoroughly investigated SIC and came up empty only provides further

confirmation that the NAL is baseless and nothing more than a manifestation of the FCC's long-felt desire to put SIC out of business to the detriment of SIC's subscribers.

V. PURPORTED PROTECTION OF THE USF DOES NOT JUSTIFY HARMING SIC'S SUBSCRIBERS

The proposed revocation of SIC's Section 214 authorization should be rejected for an additional, independent reason: it will result in the discontinuation of service to SIC's subscribers, regardless of the FCC's lip service that it should continue. Revocation will effectively abandon SIC's subscribers, causing significant and irreparable harm to the very people that depend upon SIC's services.

Indeed, the NAL completely ignores the uncontested evidence adduced by SIC that the public – the HHL subscribers who are the beneficiaries of SIC's network – have been extremely well served by SIC. *See* Petition, "Keep Sandwich Isles Communications the Incumbent Local Exchange Carrier to Receive Funding to Maintain and Upgrade Telecommunications System," filed in WC Docket No. 10-90. Numerous customers of SIC have submitted letters to the Commission indicating their satisfaction with the services SIC has provided to them and their need for continued services from SIC. *See, e.g.,* January 2017 Letter from B. Rivera to FCC filed in WC Docket No. 10-90 ("Because of our situation, no other telecommunications company wanted to provide us service because it was not profitable for them to do so. We appreciate the service that SIC has provided and ask that you ensure that they continue to operate so that we may receive uninterrupted service."); January 2017 Letter from C. Hiro to FCC filed in WC Docket No. 10-90 ("Sandwich Isles has served our community well since it began providing telephone service to our rural communities that were by-passed by other telephone companies. . . . We support Sandwich Isles and ask that you maintain its ability to continue its good work to provide telecommunications service."); January 2017 Letter from B. Kakihei to FCC filed in WC Docket No. 10-90 ("SIC has

built telephone infrastructure for all homestead areas, even those places that were bypassed by the dominant telephone provider, Hawaiian Tel. SIC's service is critical to our island of Molokai. . . . SIC should be allowed to continue providing this critical service."); January 2017 Letter from V. Patcho to FCC filed in WC Docket No. 10-90 ("For the sake of Hawaii's people, I urge you to ensure that native Hawaiians are able to benefit from the federal programs that allow SIC to provide today's technology at affordable prices."). None of those subscribers complain about SIC nor contend that they have somehow been defrauded. Indeed, there is no finding of any harm to any of SIC's subscribers in either the NAL or the Commission's accompanying FCC 16-167 Order. Nor does the Commission identify a single complaint from any subscriber about the telecommunications service provided by SIC.

What should be most relevant to the Commission here is the impact that a Section 214 authorization revocation will have on SIC's subscribers. That is not, unfortunately, how the Commission has viewed this proceeding, largely due to the prejudicial bias it holds against SIC. Put simply, sacrificing the safety and interests of HHL residents who depend upon SIC's services in order to somehow "protect" the USF is not reasoned agency decision-making.

VI. CONCLUSION FOR SHOW CAUSE SECTION

For the reasons stated above, the proposed revocation of SIC's Section 214 authorization must be categorically rejected.

Dated: March 16, 2017

Respectfully submitted,

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